

Request for approval of nonrule policy document to address alterations of historic sites on state properties or by state funding; Administrative Cause No. 10-181H

The Division of Historic Preservation and Archaeology requests approval of a nonrule policy document to address alterations of historic sites on state properties or that include state funding. The purpose of the document would be to continue the use of a process, applied successfully by temporary rule since October 2008, pending the disposition of a pending permanent rule (LSA Document #10-42). If all or a portion of LSA Document #10-42 becomes effective, the nonrule policy document would terminate.

NATURAL RESOURCES COMMISSION

Information Bulletin #64

SUBJECT: Temporary Guidance regarding Alterations of Historic Sites on State Properties or by State Funding

1. Purpose and Termination

The purpose of this information bulletin is provide guidance concerning the alteration, demolition, or removal of historic sites and historic structures by a project funded, in whole or in part, by the state of Indiana. Similar provisions formerly applied in LSA Document #08-762(E) and LSA Document #09-774(E).

Currently pending is a proposal in LSA Document #10-42 for a permanent rule to address the same subject matter. If all or a portion of LSA Document becomes effective, this information bulletin terminates immediately.

2. Application

(a) Except as provided in subsection (b), this information bulletin governs an action to alter, demolish, or remove by a project funded by the state, in whole or in part, of either of the following:

(1) A historic site or historic structure owned by the state.

(2) A historic site or historic structure listed on the National Register or Indiana register.

(b) Real property that is owned by a state educational institution, if the property is governed by IC 14-21-1-18(c), is exempted from this document.

3. Definitions

(a) The definitions in IC 14-8, IC 14-21-1, 312 IAC 1, 312 IAC 20-2, and this section apply to this information bulletin.

(b) “Adverse impact” means an action that results in changes to the exterior or interior appearance or the setting of a historic site or historic structure that are inconsistent with any of the following:

(1) 36 CFR Part 68 and “The Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings” (U.S. Department of the Interior, National Park Service, Washington, D.C., 1995).

(2) “The Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings” (U.S. Department of the Interior, National Park Service, Washington, D.C., 1990).

(3) “The Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes” (U.S. Department of the Interior, National Park Service, Washington, D.C., 1996).

(4) “The Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation” at 48 FR 44716.

(5) 312 IAC 21.

(c) “District” means a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development as determined under the National Register Bulletin “How to Apply the National Register Criteria for Evaluation” (NRB 15, as revised for Internet, 2002).

(d) “Setting” means the physical environment of a historic site or historic structure that is associated with it historically or by design.

4. Evaluations of Sites and Structures

(a) In evaluating whether a site is a historic site, the division shall take into account what is important to the general, archaeological, agricultural, economic, social, political, architectural, industrial, or cultural history of Indiana. In evaluating impacts on a historic site, the division shall also consider adjacent property that is necessary for the preservation or restoration of the site. To assist in an evaluation, reference shall be made to the definitions of a “site” or a “district” set forth by the National Park Service at 36 CFR 60.3 and to the definitions for “historic designed landscape” and “historic vernacular landscape” in “The Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes” (U.S. Department of the Interior, National Park Service, Washington, D.C., 1996, page five (5)).

(b) In evaluating whether a structure is a historic structure, the division shall take into account what is important to the general, archaeological, agricultural, economic, social, political, architectural, industrial, or cultural history of Indiana. In evaluating impacts on a historic structure, the division shall also consider adjacent property that is necessary for the preservation or restoration of the structure. To assist in an evaluation, reference shall be made to the definitions of a building, structure, or object set forth by the National Park Service at 36 CFR 60.3.

5. Licensure Requirement for State-Owned or State-Funded Alterations, Demolitions, or Removals of Historic Sites and Historic Structures

- (a) Except as provided in section 6 of this information bulletin, a state agency may not alter, demolish, or remove any state-owned historic site or historic structure eligible for or listed in the National Register or Indiana register by a project funded, in whole or in part, by the state, unless the agency obtains in advance a certificate issued under IC 14-21-1-18 and this information bulletin.
- (b) Except as provided in section 6 of this information bulletin, a state agency or other entity employing state funds may not alter, demolish, or remove any historic site or historic structure that is listed on the National Register or Indiana register and not owned by the state, unless the agency or entity obtains in advance a certificate of approval.
- (c) A state agency or entity described in subsection (a) or (b) must file an application for a certificate with the division on a division form that includes the following information:
 - (1) A detailed description or scope of work of all construction, demolition, landscaping, earthmoving, rehabilitation, and installation activities.
 - (2) A detailed explanation of how, and to what extent, land, buildings, structures, or objects, in or adjacent to the project area, could be physically altered or visually modified or obscured.
 - (3) A description of current and past land uses within the project area.
 - (4) A statement including the known or approximate dates of construction of buildings, structures (as defined in 36 CFR 60.3), and objects located within or adjacent to the project area.
 - (5) A statement identifying known archaeological sites in the project area.
 - (6) A statement including the known or approximate dates of constructions of all properties within historic districts that are situated within or adjacent to a project area.
 - (7) A statement as to whether any historic sites or historic structures could be altered, demolished, or removed as the result of the acquisition or construction of a new facility and a description of such sites or structures.
 - (8) A map identifying the location of the project.
 - (9) Recent photographs depicting any buildings, structures, objects, or districts (as defined in 36 CFR 60.3) that may be at least fifty (50) years old and that could be impacted by the project in any way.
 - (10) A site plan for projects that will involve new construction, additions to existing buildings, changes in right-of-way, or earthmoving activities on a particular lot or lots.
 - (11) Copies of architectural or engineering plans or specifications for projects involving an addition to, rehabilitation, or restoration of a historic building or structure (as defined in 36 CFR 60.3).
 - (12) If a historic site or historic structure would be altered, demolished, or removed as part of the project, an identification of any alternatives that were, or could reasonably be, considered that would have a lesser impact on the site or structure.
 - (13) In projects involving alterations, demolitions, or removals of a historic site or historic structure, a discussion of the advantages and disadvantages of alternatives investigated and the feasibility of each. If no alternatives appear to be feasible, an explanation must be provided as to why none are feasible.

6. Letters of Clearance by Division Director

- (a) The division director shall issue a letter of clearance, and exempt an applicant from obtaining a certificate of approval under section 5, if the division director concludes, after reviewing an application, that there are no known state-owned historic sites or historic structures that are eligible for inclusion or listed on the National Register or Indiana register in the project area.
- (b) The division director shall also issue a letter of clearance, and exempt an applicant from obtaining a certificate of approval under section 5, if the division director concludes, after reviewing an application, that there are no nonstate-owned historic sites or structures listed on the National Register or Indiana register in the project area, if the project is funded, in part or in whole, by the state.
- (c) The division director may issue a letter of clearance, and exempt an applicant from obtaining a certificate of approval under section 5, if the division director concludes, after reviewing an application, that there will be no adverse impact on any known state-owned historic site or historic structure that is eligible for inclusion or listed on the National Register or Indiana register in the project area.
- (d) The division director may also issue a letter of clearance, and exempt an applicant from obtaining a certificate of approval under section 5, if the division director concludes, after reviewing an application, that there will be no adverse impact on any known historic site or historic structure that is not state-owned and is listed on the National Register or Indiana register, if the project is funded, in part or in whole, by the state.
- (e) In determining whether there will be an adverse impact under subsection (c) or (d), the division director shall consider whether the changes proposed in an application meet the following:
 - (1) 36 CFR Part 68 and “The Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings” (U.S. Department of the Interior, National Park Service, Washington, D.C., 1995).
 - (2) “The Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings” (U.S. Department of the Interior, National Park Service, Washington, D.C., 1990).
 - (3) “The Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes” (U.S. Department of the Interior, National Park Service, Washington, D.C., 1996).
 - (4) “The Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation” at 48 FR 44716.
 - (5) 312 IAC 21.
- (f) Activities that would have an adverse impact include the following:
 - (1) Removing all or part of a historic structure from its original location.
 - (2) Demolishing all or part of a historic site or a historic structure.
 - (3) Introducing new permanent elements not in keeping with the setting of a historic site or historic structure.
 - (4) Introducing new permanent exterior or interior features to a historic structure that are not in keeping with the features of the structure that contribute to its eligibility or listing in the National Register or Indiana register.
 - (5) Disturbing the soil of an archaeological site in a manner that does not conform to 312 IAC 21 and 312 IAC 22.

- (6) Similar activities determined by the division director to have an adverse impact.
- (g) The division director shall provide interested persons with notice by e-mail or U.S. mail of a determination to grant a letter of clearance. The division shall maintain a list of persons who request, in writing, to receive this notice. Within fifteen (15) days after the division director's determination, an interested person may request a member of the review board to provide public hearing and review under 312 IAC 2-3. The designated member shall issue a determination whether an application for a certificate of approval must be filed. If the designated member determines an application must be filed, the division shall place the completed application on the agenda of the review board's next meeting. If the designated member determines that an application for a certificate is not required, the division director's letter of clearance is affirmed. A determination under this subsection is not effective until the later of the following:
 - (1) fifteen (15) days after issuance of the determination; or
 - (2) the day resulting from a notice given under 312 IAC 2-3-7(d).

7. Historic Sites and Historic Structures Determined Ineligible for Letters of Clearance

- (a) If the division director (or the review board under section 6(g) of this information bulletin) determines that a certificate is required for a proposed activity, the division director may request additional information from the applicant on the project deemed appropriate to presenting a complete application for consideration by the review board.
- (b) If the division director determines that a certificate is required for a proposed activity, the director shall notify the applicant and other interested persons that the application would be placed on the agenda of the review board for action. An application must be complete at least forty (40) days before a scheduled meeting of the review board in order to qualify for placement on the agenda of the meeting. The notice to the applicant and other interested persons shall be sent by the division director at least ten (10) days before the meeting.
- (c) The division shall prepare a staff comment on the project and its adverse impact on eligible or listed historic sites or historic structures. The comment may recommend ways to remove or reduce the adverse impact to an acceptable level or to mitigate the adverse impact if removal or substantial reduction is not feasible. If removal or reduction of the adverse impact to an acceptable level or mitigation of the impact does not appear feasible, the division may recommend denial of the application.
- (d) The review board shall provide a reasonable opportunity for the applicant and other interested persons to provide oral or written comments at the meeting with respect to an application. The review board may act upon an application during the initial meeting when the application is considered or may defer action until a subsequent meeting.
- (e) The review board shall consider the application of the agency, the staff comment, and comments made by the public at the review board meeting in deciding whether to issue a certificate.
- (f) The review board may grant, condition, or deny an application for a certificate.